

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

Creedon Controls, Inc., a Delaware corporation,)	
)	Case No. 1:06-cv-454
Plaintiff,)	
)	
v.)	
)	
Banc One Building Corporation, an Illinois)	
corporation; and Forest Electric Corporation, a)	
New York corporation,)	
)	
Defendants.)	

AFFIDAVIT OF ROBERT K. BESTE, JR AND AMENDMENT TO COMPLAINT

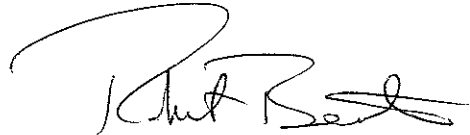
Being first duly sworn according to law, Robert K. Beste, Jr., Esquire does hereby depose and state as follows:

1. That he is the attorney for Plaintiff in the captioned action.
2. That Defendant Banc One Building Corporation is an Illinois corporation, and not a resident of Delaware.
3. That the Summons and Complaint directed to Defendant Banc One Building Corporation was served upon the Secretary of State of the State of Delaware, pursuant to 10 Del.C. §3104, on June 26, 2006.
4. That the Sheriff's Return was filed with the Office of the Prothonotary on July 17, 2006.
5. That by letter dated July 18, 2006, and sent by Registered Mail, Return Receipt requested, your Affiant sent a copy of the Summons and Complaint to Defendant Banc One Building Corporation, which letter and enclosures constituted Notice to Defendant of the initiation of this action, as required by 10 Del.C. §3104. A copy of the letter dated July 18, 2006, containing such

notice, and the attachments to the letter, are attached hereto as Exhibit "A."

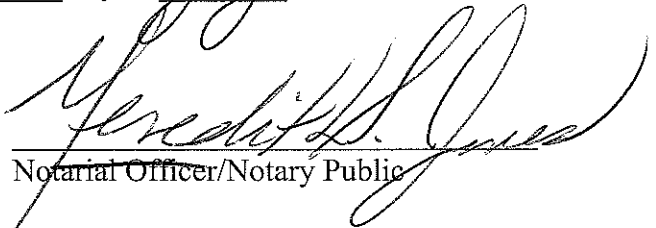
6. That attached hereto as Exhibit "B" is the original of the return receipt obtained at the time that Exhibit "A" was mailed at the post office by your Affiant.

7. That attached hereto as Exhibit "C" is the original return receipt from delivery of the Registered letter and attachments, directed to Defendant Banc One Building Corporation, which receipt was received in the offices of your Affiant on July 28, 2006.



Robert K. Beste, Jr., Esq. (I.D. No. 154)

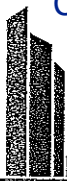
Sworn to and subscribed before me this 31st day of July 2006.


Notarial Officer/Notary Public

MEREDITH S. JONES
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires April 28, 2008

RKB/msj
06894-0001

EXHIBIT “A”



COHEN SEGLIAS PALLAS GREENHALL & FURMAN PC

Robert K. Beste, Jr.
Attorney At Law

Nemours Building, Suite 1130
1007 Orange Street
Wilmington, DE 19801

T: 302.425.5089 | F: 302.425.5097
rbeste@cohenseglias.com
www.cohenseglias.com

July 18, 2006

**BY REGISTERED MAIL,
RETURN RECEIPT REQUESTED**

Banc One Building Corporation
1 Banc One Plaza
Mail Code IL1-0505
Chicago, IL 60670-0503

RE: **Creedon Controls, Inc. v. Banc One Building Corporation, & Forest Electric Corporation - IT Conveyance - Phase II (C. A. No. 06C-06-111 MJB**

Dear Sir/Madam:

Please be advised that this office represents Plaintiff in the captioned action, filed in the Superior Court of the State of Delaware.

Enclosed please find a copy of the Complaint, Summons, and Sheriff's Return (on the reverse of the Summons). The Sheriff's Return shows that service of process has been made upon Banc One Building Corporation, by serving the Secretary of State of the State of Delaware, pursuant to 10 Del. C. §3104, which service is as effective, for all intents and purposes, as if made upon your corporation personally, within the State of Delaware.

Very truly yours,

ROBERT K. BESTE, JR.

RKB/msj

Enclosures

cc: Philip Trainer, Jr., Esq. (w/ encls.)

Paul A Bradley, Esq. (w/ encls.)

Jodi A. Kleinick, Esq. (w/ encls.)

06894-0001

SUMMONS

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Creedon Controls, Inc., a Delaware corporation,

Plaintiff,

v.

Banc One Building Corporation, an Illinois
corporation; and Forest Electric Corporation, a
New York corporation,

Defendants.

)
) C. A. No. 06C-06-111 MJB

)
)
) ARBITRATION CASE
)

RECEIVED

JUN 26 2006

1015
Secretary of State

2006 JUN 21 AM 10:29

SHERIFF'S HANDS
KENT COUNTY, DEL.

THE STATE OF DELAWARE,
TO THE SHERIFF OF KENT COUNTY:
YOU ARE COMMANDED:

To summon the above-named Defendant BANC ONE BUILDING CORPORATION, by serving the Secretary of State of Delaware, so that, within 20 days after service hereof upon, exclusive of the day of service, Defendant shall serve upon Robert K. Beste, Jr., Esquire, Plaintiff's attorney, whose address is Cohen, Seglias, Pallas, Greenhall & Furman, P.C., 1007 Orange Street, Suite 1130, Wilmington, Delaware 19801, an Answer to the Complaint, and, if an Affidavit of Demand has been filed, an Affidavit of Defense.

To serve upon Defendant a copy of the Complaint, and the Affidavit of Demand if any has been filed by Plaintiff.

DATED: 6/19/06

Sharon Agnew
Prothonotary
Per Deputy

TO THE ABOVE-NAMED DEFENDANT:

In case of your failure within twenty (20) days after service hereof upon you, exclusive of the day of service, to serve on Plaintiff's attorney named above, an Answer to the Complaint, and, if an Affidavit of Demand has been filed, an Affidavit of Defense, judgment by default will be rendered against you for the relief demanded in the Complaint, or in the Affidavit of Demand, if any.

DATED:

Sharon Agnew
Prothonotary
Per Deputy

Sheriff's Return

Served the within Summons and copy of the following complaint:

SUMMONS AND COMPLAINT

this day, Monday, June 26, 2006, personally upon **HARRIET SMITH WINDSOR**, Secretary of State of the State of Delaware, by leaving with her a true and correct copy of the said Summons for the defendant:

BANC ONE BUILDING CORPORATION

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2006 JUL 17 AM 10:32

and a copy of the Complaint for the said defendant, together with the sum of \$ 2.00 Dollars, as prescribed by Section 3104 of Title 10 of the Delaware Code of 1978.

So Answers,

Jim Higdon

Jim Higdon
Sheriff of Kent County

SUMMONS

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Creedon Controls, Inc., a Delaware corporation,)
) C. A. No. _____
Plaintiff,)
)
v.) **ARBITRATION CASE**
)
Banc One Building Corporation, an Illinois)
corporation; and Forest Electric Corporation, a)
New York corporation,)
)
Defendants.)

**THE STATE OF DELAWARE,
TO THE SHERIFF OF KENT COUNTY:
YOU ARE COMMANDED:**

To summon the above-named **Defendant BANC ONE BUILDING CORPORATION**, by serving the **Secretary of State of Delaware**, so that, within 20 days after service hereof upon, exclusive of the day of service, Defendant shall serve upon Robert K. Beste, Jr., Esquire, Plaintiff's attorney, whose address is Cohen, Seglias, Pallas, Greenhall & Furman, P.C., 1007 Orange Street, Suite 1130, Wilmington, Delaware 19801, an Answer to the Complaint, and, if an Affidavit of Demand has been filed, an Affidavit of Defense.

To serve upon Defendant a copy of the Complaint, and the Affidavit of Demand if any has been filed by Plaintiff.

DATED:

Prothonotary

Per Deputy

TO THE ABOVE-NAMED DEFENDANT:

In case of your failure within twenty (20) days after service hereof upon you, exclusive of the day of service, to serve on Plaintiff's attorney named above, an Answer to the Complaint, and, if an Affidavit of Demand has been filed, an Affidavit of Defense, judgment by default will be rendered against you for the relief demanded in the Complaint, or in the Affidavit of Demand, if any.

DATED:

Prothonotary

Per Deputy

SUMMONS

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

Creedon Controls, Inc., a Delaware corporation,

Plaintiff,

v.

Banc One Building Corporation, an Illinois
corporation; and Forest Electric Corporation, a
New York corporation,

Defendants.

)
) C. A. No. _____
)

) ARBITRATION CASE
)

)
)
)
)
)
)
)

**THE STATE OF DELAWARE,
TO THE SHERIFF OF NEW CASTLE COUNTY:
YOU ARE COMMANDED:**

To summon the above-named Defendant **FOREST ELECTRIC CORPORATION**, by serving its Registered Agent, so that, within 20 days after service hereof upon, exclusive of the day of service, Defendant shall serve upon Robert K. Beste, Jr., Esquire, Plaintiff's attorney, whose address is Cohen, Seglias, Pallas, Greenhall & Furman, P.C., 1007 Orange Street, Suite 1130, Wilmington, Delaware 19801, an Answer to the Complaint, and, if an Affidavit of Demand has been filed, an Affidavit of Defense.

To serve upon Defendant a copy of the Complaint, and the Affidavit of Demand if any has been filed by Plaintiff.

DATED:

Prothonotary

Per Deputy

TO THE ABOVE-NAMED DEFENDANT:

In case of your failure within twenty (20) days after service hereof upon you, exclusive of the day of service, to serve on Plaintiff's attorney named above, an Answer to the Complaint, and, if an Affidavit of Demand has been filed, an Affidavit of Defense, judgment by default will be rendered against you for the relief demanded in the Complaint, or in the Affidavit of Demand, if any.

DATED:

Prothonotary

Per Deputy

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

Creedon Controls, Inc., a Delaware corporation,

Plaintiff,

v.

Banc One Building Corporation, an Illinois
corporation; and Forest Electric Corporation, a
New York corporation,

Defendants.

)
) C. A. No. _____
)
)

) **ARBITRATION ACTION**
)
)
)
)
)

FILED
PROthonary
2006 JUN -9 PM 4:10

COMPLAINT

1. Plaintiff, Creedon Controls, Inc. (hereinafter "CCI") is a corporation of the State of Delaware, with its principal place of business located at 3424 Old Capitol Trail, Wilmington, Delaware 19808.

2. Defendant Banc One Building Corporation (hereinafter "BOBC") is a corporation of the State of Illinois. Service of process may be made upon BOBC by serving the Secretary of State of the State of Delaware, pursuant to 10 Del. C. §3104.

3. Defendant Forest Electric Corporation (hereinafter "FEC") is a corporation of the State of New York. Service of process may be made upon FEC by serving its Registered Agent, "The Corporation Service Company," located at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

COUNT I
(Breach of Contract – BOBC)

4. CCI incorporates herein by reference the allegations contained in Paragraphs 1 through 3, as though set forth at length herein.

5. CCI entered into a contract with BOBC, with respect to the matter known as

“RFP 21B IT Cable Conveyance System – Phase II.”

6. In accordance with such contract, CCI performed services and provided materials having a contract value of \$1,415,790.60, of which \$1,346,838.28 has been paid to CCI.

7. BOBC owes CCI an amount of \$68,952.40, under such contract.

8. In accordance with such contract terms, CCI is entitled to reasonable attorney’s fees and expenses.

9. CCI is entitled to pre-judgment interest.

COUNT II
(Breach of Contract - FEC)

10. CCI incorporates herein by reference the allegations contained in Paragraphs 1 through 9, as though set forth at length herein.

11. In the alternative, CCI entered into a contract with FEC, with respect to the matter known as “RFP 21B IT Cable Conveyance System – Phase II.”

12. In accordance with such contract, CCI performed services and provided materials having a contract value of \$1,415,790.60, of which \$1,346,838.28 has been paid to CCI.

13. FEC owes CCI an amount of \$68,952.40, under such contract.

14. In accordance with such contract terms, CCI is entitled to reasonable attorney’s fees and expenses.

15. CCI is entitled to pre-judgment interest.

COUNT III
(6 Del. C. Chapter 35 - FEC)

16. CCI incorporates herein by reference the allegations contained in Paragraphs 1 through 15, as though set forth at length herein.

17. Upon information and belief, FEC has received funds from BOBC, in connection with the contract between FEC and CCI, for the work performed by CCI for the RFP 21B IT Cable Conveyance System – Phase II.

18. The agreed-upon work to be performed by CCI has been fully performed. FEC has refused appropriate payment to CCI.

19. Although FEC has received funds from BOBC, FEC has not applied such funds or used those funds to make payments due to CCI in connection with such contract, and in violation of 6 Del. C. Chapter 35; and FEC has failed to apply monies received by it for work performed by CCI, by making payment to CCI.

20. FEC's withholding of payment due to CCI has not been in good faith, or for reasonable cause. Therefore, in addition to other remedies claimed herein by CCI, CCI is entitled to an award of damages equal to the amount which has been determined by this Court to have been wrongfully withheld, together with attorneys' fees, arbitrator's fees, expert witness fees, and costs, pursuant to 6 Del. C. §3509(a).

COUNT IV
(6 Del. C. Chapter 35 - BOBC)

21. CCI incorporates herein by reference the allegations contained in Paragraphs 1 through 20, as though set forth at length herein.

22. The agreed-upon work to be performed by CCI has been fully performed. BOBC has refused appropriate payment to CCI.

23. BOBC's withholding of payment due to CCI has not been in good faith, or for reasonable cause. Therefore, in addition to other remedies claimed herein by CCI, CCI is entitled to an award of damages equal to the amount that has been determined by this Court to have been

wrongfully withheld, together with attorneys' fees, arbitrator fees, expert witness fees, and costs, pursuant to 6 Del. C. §3509(a).

COUNT V
(Unjust Enrichment)

24. CCI incorporates by reference the allegations contained in Paragraphs 1 through 23, as though set forth at length herein.

25. The fair and reasonable value of services rendered and work performed by CCI on behalf of both Defendants under the aforesaid contract, is \$1,415,790.60, of which \$1,346,838.28 has been paid. The balance due and owing CCI is \$68,952.40.

WHEREFORE, Creedon Controls, Inc. demands judgment against both Defendants, for the contract balance of \$68,952.40., together with pre-judgment and post-judgment interest, the costs of this action, an award of damages equal to the amount determined by the Court as having been wrongfully withheld, and attorneys' fees, arbitrator's fees, expert witness fees, and costs, pursuant to 6 Del. C. §3509.

Cohen, Seglias, Pallas, Greenhall &
Furman, P.C.



Edward Seglias, Esq. (I. D. No. 2822)
Robert K. Beste, Jr., Esq. (I. D. No. 154)
1007 Orange Street, Nemours Bldg., Ste. 1130
Wilmington, DE 19801
(302) 425-5089
Attorneys for Plaintiff, Creedon Controls, Inc.

Date: 6/9/06
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EXHIBIT "B"

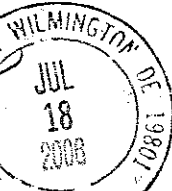
Registered No. RB6692403/645		Date Stamp	
To Be Completed By Post Office	Reg. Fee 7.90		
	Handling Charge		Return Receipt 1.85
	Postage .87		Restricted Delivery
	Received by <i>Ac</i>		
	Customer Must Declare Full Value \$		<input type="checkbox"/> With Postal Insurance <input type="checkbox"/> Without Postal Insurance
Domestic Insurance up to \$500 is included in the fee. International indemnity is limited. (See Reverse).			
OFFICIAL USE			
To Be Completed By Customer (Please Print) All Entries Must Be in Ballpoint or Typed	FROM	Robert K. Beste, Jr. - Cohen, Sephians, et al. - 1007 Orange St. Ste. 205, Wilmington, DE 19801	
	TO	Banc One Bldg. Corp. - 1 Banc One Plaza Mail Code ILI-0505 Chicago, IL 60670-0503	
PS Form 3806, Receipt for Registered Mail Copy 1 - Customer May 2004 (7530-02-000-9051) (See Information on Reverse) For domestic delivery information, visit our website at www.usps.com ®			

EXHIBIT "C"

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION DELIVERY
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>	<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>X</p>
<p>1. Article Addressed to:</p>	<p>B. Received by (Printed Name) C. Date of Delivery</p>
<p>Banc One Building Corporation 1 Banc One Plaza Mail Code IL1-0505 Chicago, IL 60670-0503</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p> <p style="text-align: center; font-size: 1.2em;">JUL 24 2006</p>
<p>2. Article Number (Transfer from service label)</p>	<p>3. Service Type BANK ONE</p> <p><input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input checked="" type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>
<p>PS Form 3811, February 2004</p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>

RB669 240 316 US (Registered)

102536-02-M-1540

CERTIFICATE OF SERVICE

I, Robert K. Beste, Jr., certify that I am not less than 18 years of age, and that service of the "Affidavit of Robert K. Beste, Jr. and Amendment to Complaint" was made both electronically and by facsimile, on July 31, 2006, upon:

BY ELECTRONIC FILING AND FIRST-CLASS MAIL

Paul A. Bradley, Esquire
Maron & Marvel, P.A.
1201 N. Market Street, Suite 900
Wilmington, DE 19801

Lawrence C. Ashby, Esquire
Philip Trainer, Jr., Esquire
Ashby & Geddes
222 Delaware Avenue
P. O. Box 1150
Wilmington, DE 19899

**Cohen, Seglias, Pallas, Greenhall &
Furman, P.C.**



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1007 Orange Street
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(302) 425-5089
Attorneys for Plaintiff, Creedon Controls, Inc.

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